



## CITY OF ATLANTA

Kasim Reed  
Mayor

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Atlanta Police Department  
George N. Turner  
Chief of Police

December 2, 2011

Ms. Joy Morrissey, Board Chair  
Atlanta Citizen Review Board  
City Hall Tower, Suite 9100  
55 Trinity Avenue, SW  
Atlanta, Georgia 30303

RE: Complaint #10-43/Marlon Kautz

Dear Ms. Morrissey:

I am in receipt of the Atlanta Citizen Review Board's letter, dated February 11, 2011, in which the ACRB recommends to Sustain the allegation of use of excessive force against Investigator Anthony Kirkman in relation to his encounter with Mr. Marlon Kautz on April 22, 2010.

On March 4, 2011, the Atlanta Police Department forwarded a letter indicating the Office of Professional Standards (OPS) had not concluded its investigation into the allegation surrounding the incident at 1150 Euclid Avenue and, therefore, had to Reject your recommendation. The OPS investigation has since been concluded and it was determined from the evidence to Not Sustain the allegations of Maltreatment or Unnecessary Force and Recovered Property against Investigator Kirkman. There is insufficient evidence to prove force was used in the investigator's encounter with Mr. Kautz. Additionally, OPS determined there is insufficient evidence to prove that the video on the cell phone was intentionally mishandled or destroyed as a result of this incident. However, as a result of its investigation, OPS did determine that there is sufficient evidence to Sustain the allegation of Conformance to Directives (APD.SOP.3020, "Search and Seizure," Section 4.3.3) against Investigator Kirkman. In order to have seized Mr. Kautz's cell phone, Investigator Kirkman's actions should have been supported by reasonable suspicion that criminal activity was afoot involving Mr. Kautz. Investigator Kirkman had no such suspicion; therefore, seizing the cell phone was unreasonable and unnecessary.

Additionally, as a result of its investigation, OPS determined that there is sufficient evidence to Sustain the allegation of Appropriate Action Required against Investigator Mark Taylor for not handling the encounter with Mr. Kautz in a considerate and restrained manner. OPS also Sustained the allegation of Responsibilities of Supervisor against Sergeant Zygaj for not immediately and appropriately addressing the investigators' actions at the scene.

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Having assessed the findings of both the Atlanta Citizen Review Board and the Department's investigative summaries, I accept, with modifications, the recommendation of the Atlanta Citizen Review Board.

Major E. B. Dancy, Commander of the Office of Professional Standards, can be contacted at (404) 658-7028, if you have any further concerns regarding this complaint.

Sincerely,



George N. Turner  
Chief of Police